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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE SERAFIN LEON,

Defendant and Appellant.

F076897

(Super. Ct. No. F16907266)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. John F. Vogt, Judge.

Jyoti Malik, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Harry Joseph Colombo, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Detjen, Acting P.J., Smith, J. and DeSantos, J.

A jury convicted appellant Jose Serafin Leon of possession for sale of hydrocodone bitartrate (Health & Saf. Code, § 11351/count 1), possession for sale of methamphetamine (Health & Saf. Code, § 11378/count 2), possession of a firearm by an ex-felon (Pen. Code, § 29800, subd. (a)(1)/count 3),<sup>1</sup> possession of ammunition by an ex-felon (§ 30305, subd. (a)(1)/count 4), and giving false information to a police officer (§ 148.9, subd. (a)/count 5). The jury also found true a firearm enhancement (§ 12022, subd. (c)) in counts 1 and 2. In a separate proceeding, the court found true four prior prison term enhancements (§ 667.5, subd. (b)).

On appeal, Leon asks us to review the sealed record to determine whether the trial court abused its discretion when it denied his motion for *Pitchess*<sup>2</sup> discovery. We have conducted the requested review and affirm the judgment.

### **FACTS**

On February 8, 2016, at approximately 8:45 p.m., Leon was driving a car with Dora Figueroa seated in the front passenger's seat and Monica DeLeon behind Leon when Clovis Police Officer Bryce Alcorn initiated a traffic stop. In response to Alcorn's request for identification, Leon stated he did not have any, that his name was Genaro Leon, and that his birthdate was July 1, 1980. However, after Alcorn asked Leon and his passengers to exit the car, Leon told him his name was Jose Leon.

Alcorn searched the area of the car where DeLeon was sitting and found a baggie containing four grams of methamphetamine in a disposable coffee cup in the door cup holder and a pipe for smoking methamphetamine behind the front passenger's seat. Under the driver's seat, he found a box that contained a jar with marijuana and a black bag. Inside the bag, he found two baggies containing methamphetamine that weighed a total of approximately 47.5 grams, a bag containing 24 hydrocodone pills, six empty clear

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise indicated.

<sup>2</sup> *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

plastic baggies, a digital scale, a red booklet, a semiautomatic handgun with a loaded magazine, and an extra magazine for the handgun. The booklet had notations with different amounts of money on different pages and appeared to be a “pay/owe sheet.”

On November 6, 2017, the Fresno County District Attorney filed a second amended information that charged Leon with the five counts he was found guilty of and the enhancements that were found true.

On November 16, 2017, the jury convicted Leon as noted above.

On November 20, 2017, the trial court found the prior prison term enhancements true, but it struck one because the underlying conviction had been reduced to a misdemeanor.

On January 10, 2018, the court struck an additional prior prison term enhancement and sentenced Leon to an aggregate eight-year prison term: the middle term of three years on his conviction in count 1, a three-year arming enhancement in that count, two one-year prior prison term enhancements, concurrent terms on each of his convictions in counts 2, 3, and 4, and credit for time served on his conviction in count 5.

### **DISCUSSION**

On June 17, 2017, defense counsel filed a *Pitchess* motion seeking discovery of all files, folders or other records that recorded or reflected any instances of conduct involving fabrication of charges, fabrication of evidence, dishonesty or other instances of conduct unbecoming an officer with respect to Alcorn.

On August 1, 2017, the court granted the motion with respect to claims involving dishonesty or misrepresentation.

The court then conducted an in camera hearing. When the hearing resumed in open court, the court stated that it had not found any records responsive to the defense’s discovery request.

The statutory scheme for *Pitchess* motions is set forth in Evidence Code sections 1043 through 1047 and sections 832.5, 832.7 and 832.8. When a defendant seeks discovery from a peace officer's personnel records, he or she must file a written motion that satisfies certain prerequisites and makes a preliminary showing of good cause. If the trial court determines that good cause has been established, the custodian of records brings to court all documents that are " 'potentially relevant' to the defendant's motion." (*People v. Mooc* (2001) 26 Cal.4th 1216, 1226 (*Mooc*).) The trial court examines these documents in camera and, subject to certain limitations, discloses to the defendant " 'such information [that] is relevant to the subject matter involved in the pending litigation.' " (*Ibid.*) The ruling on a *Pitchess* motion is reviewed for an abuse of discretion. (*People v. Hughes* (2002) 27 Cal.4th 287, 330.)

Here, the trial court followed the proper procedure and created an adequate record of the in camera hearing. (See *Mooc, supra*, 26 Cal.4th at p. 1228.) Having examined the in camera proceedings, we conclude the court did not abuse its discretion when it determined that there were no discoverable records. We therefore uphold the trial court's ruling.

#### **DISPOSITION**

The judgment is affirmed.